

REMARKS

Claims 1-26 are pending in this application. By this Amendment, claims 11 and 12 are amended and new claims 24-26 are added.

In reply to the June 23, 2003 Restriction Requirement, Applicants provisionally elect Group I, claims 1-10 and 13-23, with traverse.

The Office Action requires restriction to one of Group I, claims 1-10 and 13-23, drawn to a device, and Group II, claims 11-12, drawn to a method.

The Office Action asserts that the inventions of Groups I and II are distinct for the reason that the device could be formed by a materially different process. In particular, the Office Action asserts that diffusion or ion implantation is a materially different process than that recited in claims 11 and 12 that results in the device recited in claims 1-10 and 13-23.

Applicants respectfully assert that the process set forth in claims 11-12 as amended (i.e., forming, on the main surface of a semiconductor substrate, a lower reflection layer, an active layer and an upper reflection layer), now encompasses within its scope the asserted materially different process. As a result, the asserted process (diffusion or ion implantation), even if it were so originally, is no longer materially different from the process recited in claims 11-12. The process proposed by the Office Action is clearly encompassed within forming a lower reflection layer, an active layer and an upper reflection layer. The asserted process and Applicants currently claimed process are therefore not materially different, as required by MPEP §806.05(f). Therefore, the Office Action no longer provides, even if it originally did so, sufficient evidence supporting the grounds for restriction. Accordingly, the Office Action has not met the burden to show that the restricted and elected claims are distinct.

Furthermore, the Office Action does not identify what steps could be replaced by the asserted process (i.e., diffusion or ion implantation). As such, the Office Action, by failing to

identify which steps are to be replaced by diffusion or ion implantation, fails to establish how the asserted process is materially different from the claimed process.

It is also respectfully submitted that the subject matter of all claims 1-26 is sufficiently related that a thorough search for the subject matter of any one Group of claims would encompass a search for the subject matter of the remaining claims. Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that "if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

In view of the foregoing, it is respectfully submitted that claims 1-26 can be examined without undue burden on the Examiner. Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,


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